

Office of Chief Counsel
Internal Revenue Service
memorandum

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Third Party Communication: None
Date of Communication: Not Applicable

UILC: 367.00-00

date: October 12, 2010

to: Laurie Hill, LMSB Bankruptcy Coordinator, IRS
1973 North Rulon White Blvd
M/S 4912
Ogden, UT 84404

from: Charles Besecky, Branch Chief, Branch 4
Office of Chief Counsel, International

subject: Potential § 7874 Issue in Bankruptcy Plan

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

The Plan =

The Debtors =

W =

X =

Y =

Z =

Country =

This memorandum is issued pursuant to CCDM 34.3.1.3.4(3) to inform you of an issue to consider in future audits.

The Plan contains a discussion of the Debtors view of the U.S. Federal income tax consequences of the transactions described in the Plan. Specifically, the Debtors claim that none of W, X, Y, and Z ("the newly-formed foreign corporations"), which are to be formed in Country, will be treated as a "surrogate foreign corporation" for purposes of section 7874 of the Internal Revenue Code. No further details are provided in the Plan as to why section 7874 will not apply to the newly-formed foreign corporations.

Section 7874 may apply to the newly-formed foreign corporations, but the Plan and related documents do not contain sufficient facts for us to offer a legal conclusion. Thus, we recommend that you consider this issue in future audits of the newly-formed foreign corporations.

The taxpayer may claim that the newly-formed foreign corporations are not "expatriated entities" because they will have substantial business activities in Country. See section 7874(a)(2)(B)(iii). We suggest careful consideration if this claim is made.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please contact the Office of Associate Chief Counsel, International at (202) 622-3860 if you have any further questions.